Presented By: Rana Jabir Abbas

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WASA'IL AL-SHIA VOL. 22

SECTION 4

Khula (Wife-Initiated Divorce) And Mubarat (Mutual Consent Divorce)

jabir.abbas@yahoo.com

HADITH COMPILED BY

Shaykh Hurr Amili

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Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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jabir.abbas@yahoo.com

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Section 4

Khula (Wife-Initiated Divorce) And Mubarat (Mutual Consent Divorce)

CHAPTER 1

Khula Is Not Valid, Nor Is Compensation Lawful For The Husband, Until The Wife's Aversion/dislike Becomes Apparent

[Hadith 28588 to 28596]

Hadith 28588

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: إذا قالت المرأة لزوجها جملة: لا اطيع لك أمراً، مفسرا وغير مفسّر، حلّ له ما أخذ منها، وليس له عليها رجعة.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: When a woman says to her husband in totality: "I will not obey any command of yours," whether explained or unexplained, what he takes from her becomes lawful for him, and he has no right of return over her.

Hadith 28589

عن سماعة بن مهران، قال: قلت لابي عبدالله (عليه السلام): لا يجوز للرجل أن يأخذ من المختلعة حتى تتكلم بهذا الكلام كله، فقال: إذا قالت: لا اطيع الله فيك، حلّ له أن يأخذ منها ما وجد.

From Sama'a ibn Mihran, who said: I said to Abu Abdullah (peace be upon him): Is it not permissible for a man to take from the one seeking khula until she speaks all of these words? He said: When she says "I will not obey Allah regarding you," it becomes lawful for him to take from her whatever he finds.

Hadith 28590

عن الحلبيّ، عن أبي عبدالله (عليه السلام)، قال: لا يحل خلعها حتى تقول لزوجها: والله لا أبر لك قسماً، ولا اطيع لك أمرا ولا أغتسل لك من جنابة، ولأوطئنّ فراشك، ولاذنن عليك بغير اذنك، وقد كان الناس يرخصون فيما دون هذا، فإذا قالت المرأة ذلك لزوجها حل له ما أخذ منها.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: Her khula is not lawful until she says to her husband: "By Allah, I will not fulfill any oath for you, I will not obey any command of yours, I will not perform ghusl for you from janaba, I will allow others to share your bed, and I will give permission regarding you without your permission." The people used to permit less than this, but when a woman says this to her husband, what he takes from her becomes lawful for him.

ورواه الصدوق بإسناده عن حمّاد مثله، وزاد: وقال (عليه السلام): يكون الكلام من عندها، يعني: من غير أن تعلم.

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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Al-Saduq narrated it through his chain from Hammad in the same manner, and added: He (peace be upon him) said: The speech should come from her, meaning: without her being taught.

Hadith 28591

عن محمّد بن مسلم، عن أبي عبدالله (عليه السلام)، قال: المختلعة التي تقول لزوجها: اخلعني، وأنا اعطيك ما أخذت منك، فقال: لا يحل له أن يأخذ منها شيئا حتى تقول: والله لا أبرّ لك قسماً، ولا اطيع لك أمرا، ولاذنن في بيتك بغير اذنك، ولاوطئن فراشك غيرك، فإذا فعلت ذلك من غير أن يعلّمها، حلّ له ما أخذ منها.

From Muhammad ibn Muslim, from Abu Abdullah (peace be upon him), he said: The mukhtali'ah (woman seeking khula) is one who says to her husband: "Grant me khula, and I will give you what I took from you." He said: It is not permissible for him to take anything from her until she says: "By Allah, I will not fulfill any oath for you, nor obey any command from you, and I will allow into your house without your permission, and I will let others share your bed." When she does this without being taught to do so, what he takes from her becomes lawful for him.

Hadith 28592

عن سماعة، قال: سألته عن المختلعة؟ قال: لا يحل لزوجها أن يخلعها حتى تقول: " لا أبر لك قسما ولا اقيم حدود الله فيك، ولا أغتسل لك من جنابة، ولأوطئنّ فراشك، وأدخلن بيتك من تكره " من غير أن تعلم هذا، ولا يتكلّمون هم، وتكون هي التي تقول ذلك.

From Sama'ah, he said: I asked him about the mukhtali'ah. He said: It is not permissible for her husband to grant her khula until she says: "I will not fulfill any oath for you, nor uphold Allah's limits regarding you, nor perform ritual purification from janabah for you, and I will let others share your bed, and I will bring into your house those whom you dislike" - without being taught this, and they should not speak for her, but she should be the one who says this.

Hadith 28593

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام)، قال: إذا خلع الرجل امرأته، فهي واحدة بائنة، وهو خاطب من الخطّاب، ولا يحل له أن يخلعها حتى تكون هي التي تطلب ذلك منه من غير أن يضربها، وحتّى تقول: لا أبر لك قسماً، ولا أغتسل لك من جنابة، ولادخلن بيتك من تكره، ولأوطئنّ فراشك، ولا اقيم حدود الله فإذا كان هذا منها فقد طاب له ما أخذ منها.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), he said: When a man grants khula to his wife, it is one irrevocable divorce, and he becomes like any other suitor. It is not permissible for him to grant her khula until she is the one who seeks this from him without him beating her, and until she says: "I will not fulfill any oath for you, nor perform ritual purification from janabah for you, and I will bring into your house those whom you dislike, and I will let others share your bed, and I will not uphold Allah's limits." When this comes from her, then what he takes from her becomes lawful for him.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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Hadith 28594

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: ليس يحل خلعها حتى تقول لزوجها، ثمّ ذكر مثل ما ذكر أصحابه، ثمّ قال أبو عبدالله (عليه السلام): وقد كان يرخص للنساء فيما دون هذا، فاذا قالت لزوجها ذلك حل خلعها، وحل لزوجها ما أخذ منها. الحديث. ورواه الشيخ بإسناده عن محمّد بن يعقوب، وكذا كل ما قبله.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: It is not permissible to divorce her through khula until she says to her husband - then he mentioned similar to what his companions mentioned, then Abu Abdullah (peace be upon him) said: And he used to grant license to women regarding matters less than this, so when she says that to her husband, her khula becomes permissible, and what he takes from her becomes permissible for her husband. End of hadith. The Shaykh narrated it through his chain from Muhammad ibn Ya'qub, and likewise all that preceded it.

Hadith 28595

عن يعقوب بن شعيب، عن أبي عبدالله (عليه السلام) انه قال: الخلع إذا قالت: لا أغتسل لك من جنابة، ولا أبر لك قسما، ولأوطئنّ فراشك من تكرهه، فاذا قالت له هذا حل له ما أخذ منها.

From Ya'qub ibn Shu'ayb, from Abu Abdullah (peace be upon him) that he said: Khula is when she says: I will not perform ghusl for you from janaba, nor will I fulfill any oath for you, and I will certainly allow someone you dislike into your bed. When she says this to him, what he takes from her becomes permissible for him.

Hadith 28596

العياشي في (تفسيره): عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: سألته عن المختلعة، كيف يكون خلعها؟ فقال: لا يحل خلعها حتى تقول: أبر لك قسماً، ولا اطيع لك أمرا، ولأوطئنّ فراشك، ولادخلن عليك بغير اذنك.

Al-Ayyashi in his Tafsir: From Abu Basir, from Abu Abdullah (peace be upon him), he said: I asked him about the woman seeking khula, how should her khula be? He said: Her khula is not permissible until she says: I will not fulfill any oath for you, nor will I obey any command from you, and I will certainly allow someone into your bed, and I will enter upon you without your permission.

فاذا هي قالت ذلك حل له خلعها، وحل له ما أخذ منها من مهرها، وما زاد، وذلك قول الله: (فلا جناح عليهما فيما افتدت به) وإذا فعل ذلك فقد بانت منه وهي أملك بنفسها، إن شاءت نكحته، وإن شاءت فلا، فان نكحته فهي عنده على ثنتين.

When she says that, her khula becomes permissible for him, and what he takes from her of her dower and what is additional becomes permissible for him. That is the saying of Allah: "So there is no blame upon them for what she gives to ransom herself [Quran, 2:229]." When he does that, she becomes separated from him and has control over herself - if she wishes she may marry him, and if she wishes, then no. If she marries him, she is with him counting as two divorces.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

CHAPTER 2

The Prohibition Of Harming Women To Force Ransom From Husbands, And The Prohibition Of Women Requesting Khula And Divorce By Choice

[Hadith 28597 to 28598]

Hadith 28597

محمّد بن علي بن الحسين في (عقاب الاعمال): بسند تقدم في عيادة المريض عن النبي (صلى الله عليه وآله) ـ في حديث ـ قال: ومن أضر بامرأة حتى تفتدي منه نفسها، لم يرض الله له بعقوبة دون النار ؛ لانّ الله يغضب للمرأة كما يغضب لليتيم.

Muhammad ibn Ali ibn al-Husayn in [the book] "Aqab al-Aamaal": With a chain of narration that was mentioned previously in the chapter on visiting the sick, from the Prophet (peace be upon him and his family) - in a hadith - he said: Whoever harms a woman until she ransoms herself from him, Allah will not be pleased with any punishment for him less than the Fire, because Allah becomes angry for the woman just as He becomes angry for the orphan.

ألا ومن قال لخادمه، أو لمملوكه، أو لمن كان من الناس: لا لبّيك، ولا سعديك، قال الله له يوم القيامة: لا لبّيك، ولا سعديك، اتعس في النار، ومن ضار مسلما فليس منّا، ولسنا منه في الدنيا والآخرة.

Indeed, whoever says to his servant, or to his slave, or to anyone among the people: "No labbayka and no sa'dayka," Allah will say to him on the Day of Resurrection: "No labbayka and no sa'dayka, may you be wretched in the Fire." And whoever harms a Muslim is not from us, and we are not from him in this world and the next.

وأيما امرأة اختلعت من زوجها لم تزل في لعنة الله وملائكته ورسله والناس أجمعين، حتّى إذا نزل بها ملك الموت قال لها: ابشري بالنار فاذا كان يوم القيامة قيل لها: ادخلي النار مع الداخلين.

And any woman who seeks khula from her husband will remain under the curse of Allah, His angels, His messengers, and all people, until when the angel of death descends upon her, he says to her: "Receive glad tidings of the Fire." Then when it is the Day of Resurrection, it will be said to her: "Enter the Fire with those who enter."

ألا وان الله ورسوله بريئان من المختلعات بغير حق، ألا وان الله ورسوله بريئان ممن أضر بامرأته حتى تختلع منه.

Indeed, Allah and His Messenger are free from those who seek khula without right. Indeed, Allah and His Messenger are free from whoever harms his wife until she seeks khula from him.

Hadith 28598

محمّد بن علي بن أحمد في (روضة الواعظين) قال: قال رسول الله (صلى الله عليه وآله): أيما امرأة سألت زوجها الطلاق من غير بأس، فحرام عليها رائحة الجنة.

Muhammad ibn Ali ibn Ahmad in [the book] "Rawdhat Al-Waizeen" said: The Messenger of Allah (peace be upon him and his family) said: Any woman who asks her husband for divorce without

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

cause, the fragrance of Paradise is forbidden to her.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 3

A Woman Who Has Undergone Khula (Divorce At Wife's Request) Is Not Separated Until Followed By Divorce

[Hadith 28599 to 28609]

Hadith 28599

عن موسى بن بكر، عن العبد الصالح (عليه السلام)، قال: قال علي (عليه السلام): المختلعة يتبعها الطلاق ما دامت في العدة.

From Musa ibn Bakr, from al-Abd al-Salih (peace be upon him), who said: Ali (peace be upon him) said: The woman who has undergone khula may be followed by divorce as long as she remains in the waiting period.

أقول: المراد بالعدة هنا: عدّة الطهر، أي: لو حاضت بعد الخلع وقبل الطلاق لم يجز، بل ينتظر الطهر.

I (Hurr Amili) say: What is meant by the waiting period here is the waiting period of purity, meaning: if she menstruates after the khula and before the divorce, it would not be permissible, but rather one should wait for purity.

Hadith 28600

عن الحلبي، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: فإذا قالت المرأة ذلك لزوجها حل له ما أخذ منها، وكانت عنده على تطليقتين باقيتين، وكان الخلع تطليقة، وقال: يكون الكلام من عندها، وقال: لو كان الامر إلينا لم نجز طلاقا إلا للعدة.

From al-Halabi, from Abu Abdullah (peace be upon him) - in a hadith - he said: When the woman says that to her husband, what he took from her becomes lawful for him, and she remains with him having two remaining divorces, and the khula was one divorce. And he said: The speech should come from her. And he said: If the matter were up to us, we would not permit divorce except during the waiting period.

أقول: هذا يدل على أن ما تضمن أن الخلع طلاق ورد من باب التقية، وكذا مايأتي، كما قاله الشيخ وغيره.

I (Hurr Amili) say: This indicates that what included that khula is divorce was narrated for the purpose of taqiyya (religious dissimulation), and likewise what follows, as the Shaykh and others have said.

Hadith 28601

عن محمّد بن مسلم، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: فاذا قالت ذلك من غير أن يعلمها حل له ما اخذ منها، وكانت تطليقة بغير طلاق يتبعها، وكانت بائنا بذلك، وكان خاطبا من الخطاب.

From Muhammad ibn Muslim, from Abu Abdullah (peace be upon him) - in a hadith - he said: So when she says that without him teaching her, what he took from her becomes lawful for him, and it was a divorce without divorce following it, and she became irrevocably divorced by that, and he

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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was a suitor among the suitors.

أقول: قد عرفت أنه محمول على التقية ؛ لما مضى، ويأتي.

I (Hurr Amili) say: You have known that it is carried upon taqiyyah (religious dissimulation) based on what has passed and what is to come.

Hadith 28602

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: عدة المختلعة عدة المطلقة، وخلعها طلاقها من غير أن يسمى طلاقا. الحديث.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: The waiting period of the woman who undergoes khula is the waiting period of the divorced woman, and her khula is her divorce without it being called a divorce. End of hadith.

Hadith 28603

عن موسى بن بكر، عن أبي الحسن الأوّل (عليه السلام)، قال: المختلعة يتبعها الطلاق ما دامت في عدة.

From Musa ibn Bakr, from Abu al-Hasan the First (peace be upon him), he said: The woman who undergoes khula can be followed by divorce as long as she remains in her waiting period.

Hadith 28604

قال الشيخ: وقال أبو عبدالله (عليه السلام): لو كان الامر إلينا لم نجز إلا طلاق السنة.

The Sheikh said: Abu Abdullah (peace be upon him) said: If the matter were up to us, we would not permit except divorce according to the Sunnah.

Hadith 28605

عن عبيد بن زرارة، عن أبي عبدالله (عليه السلام)، قال: ما سمعته منى يشبه قول الناس فيه التقية، وما سمعت مني لا يشبه قول الناس فلا تقية فيه.

From Ubayd ibn Zurarah, from Abu Abdullah (peace be upon him), who said: What you have heard from me that resembles what the people say contains taqiyyah, and what you have heard from me that does not resemble what the people say contains no taqiyyah.

اقول: وفي معناه أحاديث كثيرة جدا، يأتي بعضها في القضاء، وقد نقل الشيخ عن ابن سماعة، أنه استدل به على أن ما تضمن أن الخلع طلاق، ورد من باب التقية مضافا إلى القرائن والتصريحات.

I (Hurr Amili) say: There are very many hadiths with this meaning, some of which will come in the section on judiciary. The Sheikh has transmitted from Ibn Sama'ah that he used this as evidence that what indicated that khula' (wife-initiated divorce) is divorce was transmitted from the perspective of taqiyyah, in addition to other contextual evidence and explicit statements.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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Hadith 28606

عن سليمان بن خالد، قال: قلت: أرأيت إن هو طلّقها بعدما خلعها، أيجوز عليها؟ قال: ولم يطلّقها، وقد كفاه الخلع، ولو كان الامر إلينا لم نجز طلاقا.

From Sulayman ibn Khalid, who said: I said: What do you think if he divorces her after he has granted her khula', does it take effect upon her? He said: He has not divorced her, and the khula' was sufficient for him. If the matter were up to us, we would not permit any divorce.

Hadith 28607

عن محمّد بن إسماعيل بن بزيع قال: سألت أبا الحسن الرضا (عليه السلام) عن المرأة تباري زوجها أو تختلع منه بشهادة شاهدين على طهر من غير جماع، هل تبين منه بذلك، (أو تكون) امرأته ما لم يتبعها بطلاق؟ فقال: تبين منه، وإن شاءت أن يرد إليها ما أخذ منها، وتكون امرأته فعلت.

From Muhammad ibn Ismail ibn Buzay who said: I asked Abu al-Hasan al-Rida (peace be upon him) about a woman who separates from her husband or seeks khula from him with the testimony of two witnesses while in a state of purity without sexual intercourse - does she become separated from him by this, or does she remain his wife unless he follows it with a divorce? He said: She becomes separated from him, and if she wishes that he return to her what he took from her and she become his wife, she may do so.

فقلت: فانّه قد روي لنا أنها لا تبين منه حتى يتبعها بطلاق، قال: ليس ذلك إذا خلع، فقلت: تبين منه؟ قال: نعم.

I said: Indeed, it has been narrated to us that she does not become separated from him until he follows it with a divorce. He said: That is not the case when there is khula. I said: Does she become separated from him? He said: Yes.

أقول: حمله الشيخ على التقيّة، ويمكن حمله على الخلع المشتمل على لفظ الطلاق، بمعنى: أنّه لا يحتاج إلى طلاق مفرد، بل اشتماله على لفظ الطلاق كاف، وإن الخلع المجرد عن الطلاق ليس بخلع معتبر شرعا.

I (Hurr Amili) say: The Shaykh interpreted this as taqiyya (dissimulation), and it can be interpreted as khula that includes the word of divorce, meaning that it does not need a separate divorce, but rather its inclusion of the word of divorce is sufficient, and that khula devoid of divorce is not legally valid khula according to Islamic law.

Hadith 28608

عن زرارة، عن أبي جعفر (عليه السلام)، قال: لا يكون الخلع حتى تقول: لا اطيع لك أمراً، ـ إلى أن قال: ـ ولا يكون ذلك إلا عند سلطان، فاذا فعلت ذلك فهي أملك بنفسها من غير أن يسمى طلاقا.

From Zurarah, from Abu Ja'far (peace be upon him), who said: There is no khula until she says: I will not obey any of your commands - until he said - and this cannot happen except before a ruler. When she does this, she has more authority over herself without it being called divorce.

أقول: قد عرفت وجهه، وقد استدل به على أن الاحاديث السابقة محمول على التقيّة : لاعتباره السلطان.

I (Hurr Amili) say: You have known its interpretation, and it has been used as evidence that the

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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previous hadiths are to be interpreted as taqiyya due to its consideration of the ruler.

Hadith 28609

عن أبي البختري، عن جعفر بن محمّد، عن أبيه (عليه السلام): أن عليا (عليه السلام) كان يقول في المختلعة: أنّها تطليقة واحدة.

From Abu al-Bakhtari, from Ja'far ibn Muhammad, from his father (peace be upon him): that Ali (peace be upon him) used to say regarding the woman who seeks khula: that it is one divorce.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 4

That A Woman Seeking Khula May Have More Than The Dower Taken From Her By Her Husband, But This Is Not Permissible In Mubarat

[Hadith 28610 to 28615]

Hadith 28610

عن زرارة، عن أبي جعفر (عليه السلام)، قال: المبارئة يؤخذ منها دون الصداق، والمختلعة يؤخذ منها (ما شئت) أو ما تراضيا عليه من صداق أو أكثر، وإنما صارت المبارئة يؤخذ منها دون الصداق، والمختلعة يؤخذ منها ما شاء ؛ لانّ المختلعة تعتدي في الكلام، وتكلّم بما لا يحلّ لها.

From Zurarah, from Abu Ja'far (peace be upon him), who said: From the woman in mubarat, less than the dower is taken from her, while from the woman seeking khula, whatever you wish may be taken from her, or whatever they mutually agree upon, whether it be the dower or more. The reason why from the woman in mubarat less than the dower is taken, while from the woman seeking khula whatever is desired may be taken, is because the woman seeking khula transgresses in speech and speaks what is not lawful for her.

Hadith 28611

عن أبي بصير، عن أبي عبدالله (عليه السلام) في حديث المباراة، قال: ولا يحل لزوجها أن يأخذ منها، إلاّ المهر فما دونه.

From Abu Basir, from Abu Abdullah (peace be upon him) in a hadith about mubarat, he said: It is not lawful for her husband to take from her except the dower or less than it.

Hadith 28612

عن محمّد بن مسلم، قال: سألت أبا عبدالله (عليه السلام) عن امرأة قالت لزوجها: لك كذا وكذا وخل سبيلي؟ فقال: هذه المبارئة.

From Muhammad ibn Muslim, he said: I asked Abu Abdullah (peace be upon him) about a woman who said to her husband: "You have such and such, so leave my way free." He said: This is mubarat.

أقول: هذا محمول على عدم الزيادة على المهر ؛ لما مضى، ويأتي.

I (Hurr Amili) say: This is understood to mean not exceeding the dower amount, based on what has passed and what is to come.

Hadith 28613

عن سماعة، قال: سألته عن المختلعة؟ فقال: لا يحل لزوجها أن يخلعها حتى تقول: لا أبر لك قسما إلى أن قال: فاذا اختلعت فهي بائن، وله أن يأخذ من مالها ما قدر عليه، وليس له أن يأخذ من المبارئة كلّ الذي أعطاها.

From Sama'a, he said: I asked him about a woman seeking khula (divorce initiated by wife). He

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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said: It is not permissible for her husband to divorce her by khula until she says: "I will not fulfill any oath for you"... until he said: When she seeks khula, she is irrevocably divorced, and he may take from her wealth whatever he is able to, but he is not permitted to take from the woman in mubarat all that he gave her.

Hadith 28614

عن زرارة، عن أبي جعفر (عليه السلام)، قال: لا يكون الخلع حتى تقول: لا اطيع لك أمرا، ولا أبرّ لك قسماً، ولا أُقيم لك حدا فخذ مني وطلقني، فاذا قالت ذلك فقد حل له أن يخلعها بما تراضيا عليه من قليل أو كثير.

From Zurarah, from Abu Ja'far (peace be upon him), he said: Khula cannot occur until she says: "I will not obey any command of yours, I will not fulfill any oath for you, and I will not observe any boundary for you, so take from me and divorce me." When she says this, it becomes permissible for him to divorce her by khula for whatever they mutually agree upon, whether little or much.

Hadith 28615

عن سماعة بن مهران قال: قلت لابي عبدالله (عليه السلام): لا يجوز للرجل أن يأخذ من المختلعة حتى تتكلم بهذا الكلام كله، فقال: إذا قالت: لا اطيع الله فيك حل له أن يأخذ منها ما وجد.

From Sama'a ibn Mihran, he said: I said to Abu Abdullah (peace be upon him): It is not permissible for a man to take anything from the woman seeking khula until she speaks all of these words. So he said: When she says "I will not obey Allah regarding you," it becomes permissible for him to take from her whatever he finds.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 5

The Divorce Of A Woman Who Seeks Khula' Is Irrevocable With No Possibility Of Return When There Is No Retraction Of What Was Given, And There Is No Inheritance Between Them If Either Dies During The Waiting Period

[Hadith 28616 to 28619]

Hadith 28616

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: إذا قالت المرأة لزوجها جملة: لا اطيع لك أمراً، مفسرا وغير مفسّر، حل له ما أخذ منها وليس له عليها رجعة.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: When a woman says to her husband in general terms: I will not obey any command of yours, whether specified or unspecified, what he took from her becomes lawful for him and he has no right of return over her.

Hadith 28617

وبهذا الإسناد عن أبي عبدالله (عليه السلام) قال: الخلع والمباراة تطليقة بائن، وهو خاطب من الخطاب.

With the same chain of narration from Abu Abdullah (peace be upon him), who said: Khula and mubarat are irrevocable divorce, and he becomes a suitor among suitors.

Hadith 28618

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: اذا قالت المرأة: والله لا اطيع لك أمراً، مفسّرا أو غير مفسّر، حلّ له ما أخذ منها، وليس له عليها رجعة.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: When a woman says "By Allah, I will not obey any command of yours," whether specified or unspecified, whatever he took from her becomes lawful for him, and he has no right of return over her.

Hadith 28619

عن الحسن بن محمّد بن القاسم الهاشميّ، قال: سمعت أبا عبدالله (عليه السلام) يقول: لاترث المختلعة والمبارئة والمستأمرة في طلاقها من الزوج شيئاً، إذا كان ذلك منهن في مرض الزوج، وإن مات في مرضه ؛ لانّ العصمة قد انقطعت منهن ومنه.

From al-Hasan ibn Muhammad ibn al-Qasim al-Hashimi, who said: I heard Abu Abdullah (peace be upon him) say: The woman who seeks khula (divorce by mutual consent), the woman who seeks mubarat (mutual consent divorce), and the woman who requests her divorce do not inherit anything from the husband if this occurred during the husband's illness and he died during his illness, because the marriage bond has been severed between them and him.

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 6

The Necessity Of Having Two Witnesses For Khula And Mubarat, And That The Woman Must Be In A State Of Purity In Which She Has Not Been Intimate, Or Be Pregnant

[Hadith 28620 to 28626]

Hadith 28620

عن عبد الرحمن بن الحجّاج، قال: سألت أبا عبدالله (عليه السلام) هل يكون خلع أو مباراة بطهر؟ فقال: لا يكون إلا بطهر.

From Abd al-Rahman ibn al-Hajjaj, he said: I asked Abu Abdullah (peace be upon him): Can khula or mubarat take place during a state of purity? He said: It cannot take place except during a state of purity.

Hadith 28621

عن سماعة، عن أبي عبدالله (عليه السلام)، قال: لا طلاق، ولا تخيير، ولا مباراة إلاّ على طهر من غير جماع بشهود.

From Sama'a, from Abu Abdullah (peace be upon him), he said: There is no divorce, no takhyir (giving the wife choice), and no mubarat except during a state of purity without intercourse, with witnesses.

Hadith 28622

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: قال: لا طلاق ولا خلع ولا مباراة، ولا خيار، إلاّ على طهر من غير جماع.

أقول حكم التخيير قد تقدم وجهه في الطلاق.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), who said: There is no divorce, nor khula, nor mubarat, nor giving choice, except during a state of purity without intercourse.

I (Hurr Amili) say: The ruling on giving choice (takhyir) has been previously explained in the chapter on divorce.

Hadith 28623

عن حمران، عن أبي عبدالله (عليه السلام) قال: لا يكون خلع، ولا تخيير، ولا مباراة إلا على طهر من المرأه من غير جماع وشاهدين يعرفان الرجل، ويريان المرأة، ويحضران التخيير، وإقرار المرأة أنها على طهر من غيرحماع يوم خيرها.

From Hamran, from Abu Abdullah (peace be upon him) who said: There can be no khula, nor giving choice, nor mubarat except during the woman's state of purity without intercourse, and

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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with two witnesses who know the man and see the woman and witness the giving of choice, and the woman's acknowledgment that she is in a state of purity without intercourse on the day he gave her the choice.

قال: فقال له محمّد بن مسلم: أصلحك الله ما إقرار المرأة ههنا؟ قال: يشهد الشاهدان عليها بذلك للرجل، حذار أن تأتي بعد فتدعي أنه خيرها وهي طامث فيشهدان عليها بما سمعا منها، وإنما يقع عليها الطلاق إذا اختارت نفسها قبل أن تقوم.

Muhammad ibn Muslim said to him: May Allah make you righteous, what is the woman's acknowledgment here? He said: The two witnesses testify against her regarding this for the man, as a precaution lest she come later and claim that he gave her the choice while she was menstruating, so they testify against her regarding what they heard from her. The divorce only takes effect upon her if she chooses herself before she gets up.

وأما الخلع والمباراة فإنه يلزمها إذا اشهدت على نفسها بالرضا فيما بينها وبين زوجها بما يفترقان عليه في ذلك المجلس، فاذا افترقا على شيء ورضيا به كان ذلك جائزا عليها، وكانت تطليقة بائنة لا رجعة له عليها، سمّي طلاقاً، أو لم يسم ولا ميراث بينهما في العدة.

As for khula and mubarat, it becomes binding upon her when she has witnesses testify regarding her consent to what is between her and her husband regarding what they separate upon in that session. When they separate upon something and both are satisfied with it, that becomes permissible against her, and it becomes an irrevocable divorce with no return for him over her, whether it is called divorce or not called so, and there is no inheritance between them during the waiting period.

قال: والطلاق والتخيير من قبل الرجل، والخلع والمباراة يكون من قبل المرأة.

He said: Divorce and giving choice are from the man's side, while khula and mubarat are from the woman's side.

Hadith 28624

عن محمّد بن مسلم وأبي بصير، قالا: قال أبو عبدالله (عليه السلام): لا اختلاع إلا على طهر من غير جماع.

From Muhammad ibn Muslim and Abu Basir, who said: Abu Abdullah (peace be upon him) said: There is no khula except during a state of purity without intercourse.

Hadith 28625

عن زرارة ومحمّد بن مسلم، عن أبي عبدالله (عليه السلام)، قال: الخلع تطليقة بائنة، وليس فيها رجعة، قال زرارة: لايكون إلا على مثل موضع الطلاق، إما طاهراً، وإما حاملاً بشهود.

From Zurarah and Muhammad ibn Muslim, from Abu Abdullah (peace be upon him), who said: Khula is an irrevocable divorce, and there is no return in it. Zurarah said: It can only take place in the same circumstances as divorce - either when she is pure or when she is pregnant, with witnesses.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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Hadith 28626

عن زرارة، ومحمّد بن مسلم، عن أحدهما (عليهما السلام)، قال: لا مباراة إلا على طهر من غير جماع بشهود.

From Zurarah and Muhammad ibn Muslim, from one of them (peace be upon them both), who said: There is no mubarat except during purity without sexual intercourse, with witnesses.

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 7

The Woman Who Sought Khula: If She Retracts Her Offer, The Divorce Becomes Revocable, And It Is Permissible For The Husband To Take Her Back, And Likewise For Mubarat

[Hadith 28627 to 28630]

Hadith 28627

عن ابن أبي عمير عن بعض أصحابه، عن أبي عبدالله (عليه السلام)، قال في المختلعة: انها لا تحل له، حتّى تتوب من قولها الذي قالت له عند الخلع.

From Ibn Abi Umayr from some of his companions, from Abu Abdullah (peace be upon him), he said regarding the woman who sought khula: She is not lawful for him until she repents from the statement she made to him at the time of khula.

Hadith 28628

عن محمّد بن إسماعيل بن بزيع، عن الرضا (عليه السلام) في حديث الخلع، قال: وإن شاءت أن يرد إليها ما أخذ منها، وتكون امرأته فعلت.

From Muhammad ibn Ismail ibn Bazi from al-Rida (peace be upon him) in a hadith about khula, he said: And if she wishes that he return to her what he took from her, and she becomes his wife, she may do so.

Hadith 28629

عن فضل أبي العباس، عن أبي عبدالله (عليه السلام)، قال: المختلعة إن رجعت في شيء من الصلح، يقول: لا رجعن في بضعك.

From Fadl Abu al-Abbas, from Abu Abdullah (peace be upon him), who said: If the woman who has been divorced through khula returns anything from the settlement, he says: Then I shall return to your private parts.

Hadith 28630

عن ابن سنان ـ يعني: عبدالله ـ عن أبي عبدالله (عليه السلام)، قال: الخلع لا يكون، إلا أن تقول المرأة لزوجها: لا أبر لك قسما، ولاخرجن بغير إذنك، ولأوطئنَّ فراشك غيرك، ولا أغتسل لك من جنابة، أو تقول: لا اطيع لك أمرا أو تطلقني، فإذا قالت ذلك فقد حل له أن يأخذ منها جميع ما أعطاها، وكل ما قدر عليه مما تعطيه من مالها.

From Ibn Sinan - meaning Abdullah - from Abu Abdullah (peace be upon him), who said: Khula cannot take place except when the woman says to her husband: I will not fulfill any oath for you, and I will go out without your permission, and I will let someone other than you sleep in your bed, and I will not perform ritual purification for you from janabah (sexual impurity), or she says: I will

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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not obey any command of yours, or you divorce me. When she says this, it becomes permissible for him to take from her everything he had given her, and whatever he is able to take of what she gives him from her wealth.

فإن تراضيا على ذلك على طهر بشهود فقد بانت منه بواحدة، وهوخاطب من الخطاب، فان شاءت زوجته نفسها، وإن شاءت لم تفعل، فان تزوجها فهي عنده على ثنتين باقيتين، وينبغي له أن يشترط عليها كما اشترط صاحب المباراة، وإن ارتجعت في شيء مما أعطيتني فأنا أملك ببضعك،

If they both agree to this while she is in a state of purity and with witnesses present, then she has become irrevocably separated from him with one divorce, and he is among those who may propose marriage. If she wishes, she may marry herself to him, and if she wishes, she need not do so. If he marries her, she is with him having two remaining divorces. It is appropriate for him to stipulate a condition upon her as the one who makes mubarat stipulates: If you take back anything from what you have given me, then I have authority over your private parts.

وقال: لا خلع، ولا مباراة، ولا تخيير، إلا على طهر من غير جماع بشهادة شاهدين عدلين،

And he said: There is no khula, no mubarat, and no takhyir (giving the wife choice) except during a state of purity without sexual intercourse, with the testimony of two just witnesses.

والمختلعة إذا تزوجت زوجا آخر ثمّ طلقها، يحلّ للأوّل أن يتزوجها، قال: ولا رجعة للزوج على المختلعة، ولا على المبارئة إلا أن يبدو للمرأة، فيردّ عليها ماأخذ منها.

When the woman divorced through khula marries another husband and he then divorces her, it becomes permissible for the first husband to marry her. He said: There is no taking back (raj'a) for the husband over the woman divorced through khula, nor over the woman divorced through mubarat, unless it occurs to the woman to return what he took from her to her.

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

CHAPTER 8

Mubarat Occurs When Each Of The Spouses Dislikes The Other

[Hadith 28631 to 28635]

Hadith 28631

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: المباراة أن تقول المرأة لزوجها: لك ما عليك، واتركني، فتركها إلا أنه يقول لها: إن ارتجعت في شيء منه، فأنا أملك ببضعك.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: Mubarat (mutual consent divorce) is when the woman says to her husband: You may have what is due to you, and leave me alone. So he leaves her, except that he says to her: If you retract anything from it, then I have authority over your private parts.

Hadith 28632

قال: وروي أنه لا ينبغي له أن يأخذ منها أكثر من مهرها، بل يأخذ منها دون مهرها، والمبارئة لا رجعة لزوجها عليها.

He said: And it is narrated that he should not take from her more than her dower, rather he should take from her less than her dower. And in mubarat, the husband has no right of return over her.

Hadith 28633

عن سماعة، قال: سألته عن المباراة، كيف هي؟ فقال: يكون للمرأة شيء على زوجها من مهر، أو من غيره، ويكون قد أعطاها بعضه، فيكره كل واحد منهما صاحبه، فتقول المرأة لزوجها: ما أخذت منك فهو لي، وما بقي عليك فهو لك، وابارئك، فيقول الرجل لها: فان أنت رجعت في شيء مما تركت، فأنا أحقّ ببضعك.

From Sama'a, he said: I asked him about the mubarat, how is it? He said: A woman has something owed to her by her husband from her dower or from something else, and he has given her part of it. Then each of them dislikes the other, so the woman says to her husband: What I have taken from you is mine, and what remains due from you is yours, and I release you mutually. Then the man says to her: If you reclaim anything of what you have left, then I have more right to your intimate companionship.

Hadith 28634

عن ابن مسكان عن أبي بصير، عن أبي عبدالله (عليه السلام) قال: المباراة تقول المرأة لزوجها: لك ما عليك واتركني، أو تجعل له من قبلها شيئا فيتركها إلا أنه يقول: فان ارتجعت في شيء فأنا أملك ببضعك، ولا يحل لزوجها أن يأخذ منها إلا المهر فما دونه.

From Ibn Miskan, from Abu Basir, from Abu Abdullah (peace be upon him), he said: The mubarat is when the woman says to her husband: You may keep what you owe me and leave me, or she gives him something from her side so he leaves her, except that he says: If you reclaim anything,

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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then I have more control over your intimate companionship. It is not lawful for her husband to take from her except the dower or less than that.

Hadith 28635

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام) قال: المبارئة تقول لزوجها: لك ما عليك وبارئني، فيتركها، قال: قلت: فيقول لها: فان ارتجعت في شيء، فأنا أملك ببضعك؟ قال: نعم.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: Mubarat is when she says to her husband: You may keep what you owe me and release me mutually, so he leaves her. He said: I asked: Does he say to her: If you reclaim anything, then I have more control over your intimate companionship? He said: Yes.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 9

Divorce By Mubarat Is Irrevocable With No Right Of Return, When The Woman Does Not Retract Her Offering, And There Is No Inheritance

[Hadith 28636 to 28639]

Hadith 28636

عن أبي الصباح الكنانيّ، قال: قال أبو عبدالله (عليه السلام): إن بارأت امرأة زوجها فهي واحدة، وهو خاطب من الخطاب.

From Abu al-Sabah al-Kinani, he said: Abu Abdullah (peace be upon him) said: If a woman mutually consents to divorce with her husband, it counts as one divorce, and he becomes like any other suitor among suitors.

Hadith 28637

عن إسماعيل الجعفي، عن أحدهما (عليهما السلام)، قال: المباراة تطليقة بائن، وليس فيها رجعة.

From Ismail al-Ju'fi, from one of them (peace be upon them both), he said: Mubarat is an irrevocable divorce, and there is no right of return in it.

Hadith 28638

عن علي بن رئاب، عن حمران، قال: سمعت أبا جعفر (عليه السلام) يتحدّث، قال: المباراة تبين من ساعتها من غير طلاق، ولا ميراث بينهما، لانّ العصمة منها قد بانت ساعة كان ذلك منها ومن الزوج.

From Ali ibn Ri'ab, from Humran, who said: I heard Abu Ja'far (peace be upon him) speaking, and he said: Mubarat (mutual consent divorce) causes separation from its moment without divorce, and there is no inheritance between them, because the marital bond from her has been severed at the moment this occurred from her and from the husband.

Hadith 28639

عن جميل بن دراج، عن أبي عبدالله (عليه السلام)، قال: المباراة تكون من غير أن يتبعها الطلاق.

From Jamil ibn Darraj, from Abu Abdullah (peace be upon him), who said: Mubarat occurs without divorce following it.

قال الشيخ الذي أعمل عليه في المباراة أنه لا يقع بها فرقة ما لم يتبعها بطلاق، وهو مذهب جميع أصحابنا المحصلين، وقوله: المباراة تكون إلى آخره، نحمله على أنه تكون مباراة، وإن كان العقد ثابتا، ولو كان صريحا في الفرقة لحملناه على التقية، حسب ما قدّمناه. انتهى. ويحتمل الحمل على الانكار وعلى المباراة المشتملة على لفظ الطلاق، فانه لا يحتاج إلى طلاق مفرد، وتقدم ما يدل على ذلك، ويأتي ما يدل عليه، وعلى تساوي حكم الخلع والمباراة.

The Sheikh said: What I act upon regarding mubarat is that separation does not occur through it unless it is followed by divorce, and this is the school of thought of all our accomplished

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

companions. His statement "Mubarat occurs..." to the end, we interpret it to mean that it is a mubarat even though the marriage contract remains valid. If it were explicit about separation, we would interpret it as taqiyyah, as we have previously mentioned. End quote. It is possible to interpret this as denial, or as mubarat that includes the word of divorce, for it does not need a separate divorce. What has preceded indicates this, and what follows will indicate it, and indicates the equality of the rulings of khula (wife-initiated divorce) and mubarat.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

CHAPTER 10

The Obligation Of The Waiting Period (Iddah) For The Woman Who Seeks Khula And The Woman Who Seeks Mubarat, Like The Waiting Period Of The Divorced Woman

[Hadith 28640 to 28645]

Hadith 28640

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: عدة المختلعة عدة المطلّقة، وخلعها طلاقها، قال: وسألته هل تمتع بشيء؟ قال: لا.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), who said: The waiting period of the woman who seeks khula is the waiting period of the divorced woman, and her khula is her divorce. He said: And I asked him, "Does she receive anything (as compensation)?" He said: No.

Hadith 28641

عن داود بن سرحان، عن أبي عبدالله (عليه السلام)، قال: في المختلعة قال: عدتها عدة المطلقة، وتعتد في بيتها، والمختلعة بمنزلة المبارئة.

From Dawud ibn Sarhan, from Abu Abdullah (peace be upon him), who said: Regarding the woman who seeks khula, he said: Her waiting period is the waiting period of the divorced woman, and she observes her waiting period in her house, and the woman who seeks khula is in the same position as the woman who seeks mubarat.

Hadith 28642

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: عدة المختلعة مثل عدة المطلقة، وخلعها طلاقها.

From Abu Basir, from Abu Abdullah (peace be upon him), who said: The waiting period of the woman who has undergone khula is like the waiting period of the divorced woman, and her khula is her divorce.

Hadith 28643

عن زرارة، قال: سألت أبا جعفر (عليه السلام) عن عدة المختلعة، كم هي؟ قال: عدة المطلقة، ولتعتدّ في بيتها، والمبارئة بمنزلة المختلعة.

From Zurarah, who said: I asked Abu Ja'far (peace be upon him) about the waiting period of the woman who has undergone khula, how long is it? He said: The waiting period of the divorced woman, and let her observe the waiting period in her house. And the woman who has undergone mubarat is in the same position as the woman who has undergone khula.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

Hadith 28644

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: عدة المبارئة والمختلعة والمخيرة عدة المطلقة، ويعتددن في بيوت أزواجهن.

From Abu Basir, from Abu Abdullah (peace be upon him), who said: The waiting period of the woman who has undergone mubarat, khula, and takhyir is the waiting period of the divorced woman, and they observe their waiting periods in their husbands' houses.

Hadith 28645

عن زرارة، عن أبي جعفر (عليه السلام)، أنه قال عدة المختلعة خمسة وأربعون يوما.

From Zurarah, from Abu Ja'far (peace be upon him), that he said: The waiting period (iddah) of a woman who has been divorced through khula is forty-five days.

قال الشيخ هذا محمول على الامة، أو على امرأة تحيض ثلاث مرات في هذه المدّة ؛ لما مرّ.

The Shaykh said: This is understood to apply to a slave woman, or to a woman who menstruates three times during this period, based on what has previously been mentioned.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

CHAPTER 11

Non-Establishment Of Mut'ah (Compensation) For The Divorced Woman Through Khula

[Hadith 28646 to 28649]

Hadith 28646

عن الحلبيّ، (عن أبي عبدالله (عليه السلام))، قال: المختلعة لا تمتع.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: The woman divorced through khula does not receive mut'ah.

Hadith 28647

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: لاتمتع المختلعة.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: The woman divorced through khula does not receive mut'ah.

Hadith 28648

عن بن البختريّ، عن أبي عبدالله (عليه السلام)، قال: قال أمير المؤمنين (عليه السلام): لكل مطلقة متعة إلا المختلعة، فإنّها اشترت نفسها.

From Ibn al-Bakhtari, from Abu Abdullah (peace be upon him), who said: Amir al-Muminin (peace be upon him) said: Every divorced woman is entitled to mut'ah (compensation) except the mukhtaliah (woman who seeks khula divorce), for she has purchased herself.

Hadith 28649

محمّد بن علي بن الحسين، قال: سئل أبو عبدالله (عليه السلام) عن المختلعة، ألها متعة؟ فقال: لا.

Muhammad ibn Ali ibn al-Husayn said: Abu Abdullah (peace be upon him) was asked about the mukhtaliah: Does she receive mut'ah? He said: No.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

CHAPTER 12

It Is Permissible For A Husband To Marry The Sister Of The Woman Who Obtained Khula From Him Before The Completion Of Her Waiting Period

[Hadith 28650 to 28650]

Hadith 28650

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل اختلعت منه امرأته، أيحل له أن يخطب اختها من قبل أن تنقضي عدة المختلعة؟ قال: نعم، قد برءت عصمتها منه، وليس له عليها رجعة.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: I asked him about a man whose wife obtained khula from him - is it permissible for him to propose to her sister before the waiting period of the woman who obtained khula expires? He said: Yes, her bond with him has been severed, and he has no right of return over her.

أقول: وتقدم ما يدل على ذلك في العدد في المصاهرة، وغيرها.

I (Hurr Amili) say: What indicates this has preceded in the chapters on waiting periods, marriage prohibitions, and other matters.

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

Presented By: Rana Jabir Abbas

CHAPTER 13

The Divorced Woman Through Khula Has No Right To Housing Or Maintenance During The Waiting Period

[Hadith 28651 to 28652]

Hadith 28651

محمّد بن علي بن الحسين بإسناده عن رفاعة بن موسى، أنّه سأل أبا عبدالله (عليه السلام) عن المختلعة، ألها سكنى ونفقة؟ فقال: لا سكنى لها، ولا نفقة.

Muhammad ibn Ali ibn al-Husayn, through his chain of narration from Rifa'a ibn Musa, that he asked Abu Abdullah (peace be upon him) about the woman divorced through khula: Does she have a right to housing and maintenance? He said: She has no right to housing, nor to maintenance.

Hadith 28652

عن رفاعة، عن أبي عبدالله (عليه السلام)، قال: المختلعة لا سكنى لها، ولا نفقة.

From Rifa'a, from Abu Abdullah (peace be upon him), he said: The woman divorced through khula has no right to housing, nor to maintenance.

أقول: وتقدم ما يدل على ذلك في العدد والنفقات.

I (Hurr Amili) say: What indicates this has already been mentioned in the chapters on waiting periods and maintenance.

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jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas

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CHAPTER 14

Mubarat Does Not Require The Presence Of A Ruler

[Hadith 28653 to 28653]

Hadith 28653

عبدالله بن جعفر في (قرب الإسناد): عن عبدالله بن الحسن، عن جده علي بن جعفر، عن أخيه موسى بن جعفر (عليهما السلام) قال: سألته عن امرأة بارأت زوجها، على أن له الذي لها عليه، ثمَّ بلغها أن سلطانا إذا رفع ذلك إليه، وكان بغير علم منه، أبى ورد عليها ما أخذ منها، كيف تصنع؟ قال: فليشهد عليها شهودا على مباراته إيّاها، أنّه قد دفع إليها الذي لها، ولا شيء لها قبله.

Abdullah ibn Ja'far in (Qurb al-Isnad): from Abdullah ibn al-Hasan, from his grandfather Ali ibn Ja'far, from his brother Musa ibn Ja'far (peace be upon them both) said: I asked him about a woman who entered into mubarat with her husband, on the condition that he would have what she owed him, then it reached her that if a ruler had this matter brought before him, and it was done without his knowledge, he would refuse it and return to her what was taken from her. How should she act? He said: Let him have witnesses testify regarding his mubarat with her, that he has given her what belonged to her, and she has no claim against him.

jabir.abbas@yahoo.com

Contact : jabir.abbas@yahoo.com https://fb.com/ranajabirabbas